

REDACTED – FOR PUBLIC INSPECTION

March 1, 2017

John L. Flynn
Tel 202 639-6007
Fax 202 661-4967
jflynn@jenner.com

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Comments on the Independent Compliance Officer's January 31, 2017 Report (Docket No. WC 16-197)

Dear Ms. Dortch:

Pursuant to Sections IX.3.f and IX.5 of Appendix B of the Federal Communications Commission's ("Commission" or "FCC") Memorandum Opinion and Order ("Order") in MB Docket No. 15-149,¹ Charter Communications, Inc. ("Charter") respectfully files the enclosed comments on the Independent Compliance Officer's ("ICO's") January 31, 2017 report.

Charter respectfully requests, pursuant to Section 0.459 of the FCC's Rules,² that the Commission withhold from public inspection and afford confidential treatment to certain portions of Charter's comments. The portions of the enclosed comments for which Charter seeks withholding and confidential treatment are identified as Highly Confidential.

Section 552(b)(4) of the Freedom of Information Act ("FOIA Exemption 4") permits an agency to withhold from public disclosure any information that qualifies as "trade secrets and commercial or financial information obtained from a person and privileged or confidential."³ Section 0.457(d)(2) of the Commission's Rules allows persons to file a request for non-disclosure when submitting materials that they wish withheld from public inspection.⁴

¹ Order, App'x B, § IX 3(f), 5.

² 47 C.F.R. § 0.459.

³ 5 U.S.C. § 552(b)(4).

⁴ 47 C.F.R. § 0.457(d)(2).

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In accordance with Section 0.459 of the Commission’s rules, Charter submits the following:

(1) Identification of the specific information for which confidential treatment is sought.⁵ Charter requests confidential treatment of the portions of the enclosed comments (“Submission”) identified as Highly Confidential.

(2) Description of the circumstances giving rise to the submission.⁶ Charter submits the Submission pursuant to Sections IX.3.f and IX.5 of Appendix B to the Order.

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.⁷ The Submission contains commercially sensitive information that may be withheld from public disclosure under FOIA Exemption 4. The Commission has recognized that, for purposes of Exemption 4, “records are ‘commercial’ as long as the submitter has a commercial interest in them.”⁸ In this regard, portions of the Submission contains detailed information regarding Charter’s business practices, data collection and processing, build-out strategy and organizational structure, which constitutes sensitive “commercial” information that may be withheld under FOIA Exemption 4.

(4) Explanation of the degree to which the information concerns a service that is subject to competition.⁹ The Submission contains proprietary and non-public information about Charter’s business operations of the type that has fallen under the Highly Confidential category in the proceeding underlying the Order.

(5) Explanation of how disclosure of the information could result in substantial competitive harm.¹⁰ Portions of the Submission are confidential because their public release would likely cause competitive harm to Charter. Providing competitors with the portions of the Submission identified as Highly Confidential would expose competitive and operational business information not ordinarily available to the public. The D.C. Circuit has found parties do not have to “show actual competitive harm” to justify confidential treatment.¹¹ Rather, “[a]ctual

⁵ *Id.* § 0.459(b)(1).

⁶ *Id.* § 0.459(b)(2).

⁷ *Id.* § 0.459(b)(3).

⁸ *Robert J. Butler*, Memorandum Opinion and Order, 6 FCC Rcd 5414 ¶ 12 (1991) (citing *Pub. Citizen Health Research Group v. F.D.A.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *Am. Airlines v. Nat’l Mediation Bd.*, 588 F.2d 863, 868 (2d Cir. 1978)).

⁹ 47 C.F.R. § 0.459(b)(4).

¹⁰ *Id.* § 0.459(b)(5).

¹¹ *Pub. Citizen Health Research Grp.*, 704 F.2d at 1291 (quoting *Gulf & Western Indus. v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1979)).

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competition and the likelihood of substantial competitive injury’ is sufficient to bring commercial information within the realm of confidentiality.”¹²

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.¹³ Charter treats the information contained in the Submission as highly confidential; it has submitted this type of information in other proceedings under the Highly Confidential legend and has committed not to publicly disclose this information.

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of information to third parties.¹⁴ Charter has not previously disclosed the portions of the Submission identified as Highly Confidential to the public.

(8) Justification of period during which the submitting party asserts that the material should not be available for public disclosure.¹⁵ Given the proprietary and non-public nature of the portions of the Submission identified as Highly Confidential, Charter requests that confidential treatment apply indefinitely.

Please let me know if you have any questions.

Sincerely,

/s/ John L. Flynn

John L. Flynn

Enclosure

¹² *Id.*

¹³ 47 C.F.R. § 0.459(b)(6).

¹⁴ *Id.* § 0.459(b)(7).

¹⁵ *Id.* § 0.459(b)(8).

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Docket Established for Monitoring)	WC Docket No. 16-197
Compliance with the Conditions Imposed in)	
the Charter Communications-Time Warner)	
Cable-Bright House Networks Order)	

**COMMENTS OF CHARTER COMMUNICATIONS, INC. ON THE INDEPENDENT
COMPLIANCE OFFICER’S FIRST REPORT ON CHARTER’S COMPLIANCE WITH
MERGER CONDITIONS**

John L. Flynn
JENNER & BLOCK LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
(202) 639-6000

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**COMMENTS OF CHARTER COMMUNICATIONS, INC. ON THE INDEPENDENT
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MERGER CONDITIONS**

Charter Communications, Inc. (“Charter”) submits these comments regarding the Independent Compliance Officer’s (“ICO”) First Report on Charter’s Compliance with the Merger Conditions (“First Report”).¹

As an initial matter, Charter notes its appreciation for the ICO’s significant effort to familiarize herself with Charter’s business, as well as for the thoroughness with which the ICO and her team have monitored Charter’s compliance over the past several months. The ICO’s hard work and diligence is readily apparent from the impressive summary of Charter’s compliance efforts in the ICO’s First Report. Charter also appreciates the ICO’s recognition that Charter, too, has put tremendous effort into working with the ICO to facilitate oversight of Charter’s compliance efforts. Charter is fully committed to working with the ICO on all of the issues raised in the First Report and with respect to the other conditions generally.

¹ Charter files these comments pursuant to Section IX.3.f of Appendix B of the Federal Communications Commission’s (“Commission” or “FCC”) Memorandum Opinion and Order (“Order”) in MB Docket No. 15-149.

A. Documentation of Compliance

The First Report recognizes that Charter is in compliance with its obligations. It also recommends that, going forward, Charter “provide greater documentation of its compliance—that is, more evidence showing that it is complying with the Conditions and setting forth steps it is taking to ensure compliance.”²

As the ICO recognized, Charter has worked closely with the ICO to respond to the ICO’s extensive document requests.³ Moreover, as detailed in the First Report, Charter has fully accommodated the ICO’s request for interviews of Charter personnel in order for the ICO to confirm Charter’s compliance with the merger conditions, supplementing the documents produced in response to the ICO’s requests.⁴ That said, Charter will work with the ICO to determine additional appropriate documentation to provide as further evidence of Charter’s compliance and/or to develop other processes through which Charter can document its compliance efforts.

B. Compliance Resources

The First Report states that the “[Company Compliance Officer (“CCO”)] is shouldering most, if not all, of the administrative responsibilities associated with compliance with the Merger Order.”⁵ The First Report recommends, going forward, that Charter “devote greater resources to [the compliance] project as the ICO begins field testing.”⁶

² First Report at 33, 43.

³ *Id.* at 5.

⁴ *Id.* at 3-5. To date, the ICO has conducted thirteen separate interviews of Charter personnel.

⁵ *Id.* at 28.

⁶ *Id.* at 42.

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By the nature of the merger conditions, substantive compliance necessarily is the responsibility of Charter's field personnel. The Compliance Office is primarily focused on tracking the business activities and overseeing compliance relative to a particular condition. For example, with respect to the Residential Build-Out Condition, and as detailed in the First Report, Charter's **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION] has overall responsibility for compliance, and **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** is supported by **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION], among many others.⁷ The compliance effort for the other merger conditions is similarly distributed among personnel in Charter's business units.

Charter is committed to dedicating the resources necessary to ensure its compliance with the merger conditions and to enable the CCO and ICO to perform their duties under the merger order. After an initial period of establishing Charter's compliance plan and the process for working with the ICO, the CCO determined that, with respect to her important administrative functions, she needed an additional full-time employee to assist her with such efforts; in the past month, after an expedited search, Charter has added that full-time employee. Outside counsel also routinely provides assistance to the CCO with compliance-related administrative functions. Nonetheless, recognizing the ICO's concern and that the administrative responsibilities of

⁷ *Id.* at 10.

Charter's compliance duties may increase as the ICO begins field testing, Charter stands ready to devote the resources required to ensure full compliance and to assist the ICO with her duties.

C. Node Data

As the First Report recognizes, Charter is coordinating with the FCC's Office of the General Counsel to determine the "set radius" to be used for node reporting,⁸ as contemplated by Section V 3(c) (iii) of Appendix B of the FCC's Order.⁹ Consistent with the ICO's recommendation,¹⁰ Charter will work with the ICO to develop a proposal to fulfill the node data reporting requirement.

D. Competitor Data

The First Report concludes that Charter [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL

INFORMATION] As the ICO recommends,¹¹ Charter will investigate reasonable solutions that may allow for [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

⁸ *Id.* at 23-24.

⁹ Order, App'x B, § V (3)(c)(iii).

¹⁰ First Report at 42.

¹¹ *Id.* at 24-25.

¹² *Id.* at 25.

[END HIGHLY CONFIDENTIAL INFORMATION]

* * *

Charter reiterates its appreciation for the ICO's diligence and looks forward to continued cooperation with the ICO to ensure full compliance with the merger conditions.

March 1, 2017

Respectfully submitted,

/s/ John L. Flynn
John L. Flynn
JENNER & BLOCK LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
(202) 639-6000

Counsel for Charter Communications, Inc.

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VERIFICATION

Pursuant to Section IX.3.f of Appendix B of the FCC's Order, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1st day of March, 2017.



John L. Flynn